

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

1. Complaint:

CCT Reference	F21/4161
Subject Councillor	Mayor Gregory Campbell (the councillor) Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)). ¹
Council	Cloncurry Shire Council

2. Decision (s150AQ):

Date:	30 October 2023
Decision:	Allegation One It is alleged that on or around 20 December 2016, Councillor Gregory Campbell, a Councillor and Mayor of Cloncurry Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> in that his conduct involved a breach of trust placed in the councillor in that his conduct was inconsistent with the local government principles in section 4(2)(a) ‘transparent and effective processes, and decision-making in the public interest’ and section 4(2)(e) ‘ethical and legal behaviour of councillors and local government employees’.

¹ This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

Particulars

- a. On 20 December 2016, at Agenda Item 6.2 of a Special Meeting of Council, Cloncurry Shire Council considered whether to adopt Version 3 of the Procurement Policy (Policy Number COR1004).
- b. An amendment to Version 3 of the Procurement Policy was to change the definition of a “Local Business/Supplier” to “A business/supplier that is majority owned by a resident or ratepayer in the local government area of Cloncurry Shire. The head office is to be within Cloncurry Shire operating from a compliant business premises.” The effect of this change was to exclude businesses without a head office in Cloncurry Shire from being eligible to receive the local advantage under the Procurement Policy.
- c. An entity that met the definition of a Local Business/Supplier was entitled to a local advantage under the Procurement Policy. This advantage varied depending on the value of the contract.
- d. The matter was not an ordinary business matter.
- e. Councillor Campbell attended the Special Meeting.
- f. Councillor Campbell had a personal interest in the matter in that he is a partner of Cairo Pastoral Company, a business which was a Local Business/Supplier under Version 3 of the Procurement Policy. Cairo Pastoral Company was on Cloncurry Shire Council’s preferred supplier list for the for the hire of plant and services from September 2012 to February 2016.
- g. Councillor Campbell’s personal interest in the matter did not arise merely because of the circumstances specified in section 173(3) of the Act, as it then was.
- h. Councillor Campbell did not inform the meeting of his personal interest in the matter and in doing so, failed to deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.
- i. Councillor Campbell’s personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because as a Local Business/Supplier, he was eligible to benefit from the local advantage and thus had an advantage over other non-local suppliers under the Procurement Policy..

Allegation Two

It is alleged that on 28 November 2017, Councillor Gregory Campbell, a councillor and Mayor of Cloncurry Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in the councillor in that his conduct was inconsistent with the local government principles in

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section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees'.

Particulars

- a. On 28 November 2017, at Agenda Item 9.1 of an Ordinary Meeting of Council, Cloncurry Shire Council considered whether to adopt Version 4 of the Procurement Policy (Policy Number COR1004).
- b. An amendment to Version 4 of the Procurement Policy was to change the definition of a "Local Business/Supplier", which involved the creation of two tiers of local supplier, being Local Supplier Level 1 and Local Supplier Level 2. The change enabled businesses that did not meet the requirements of the Local Business/Supplier definition under the previous version of the policy, to access half of the local supplier advantage under the new two-tier system.
- c. An entity that met the definition of either a Local Supplier Level 1 or Local Supplier Level 2 was entitled to a local advantage under the Procurement Policy. This advantage varied depending on the value of the contract.
- d. The matter was not an ordinary business matter.
- e. Councillor Campbell attended the Ordinary Meeting.
- f. Councillor Campbell had a personal interest in the matter in that he is a partner of Cairo Pastoral Company, a business which fell within the definition of a Local Supplier Level 1 under Version 4 of the Procurement Policy. Cairo Pastoral Company was on Cloncurry Shire Council's preferred supplier list for the for the hire of plant and services from September 2012 to February 2016.
- g. Councillor Campbell's personal interest in the matter did not arise merely because of the circumstances specified in section 173(3) of the Act, as it then was.
- h. Councillor Campbell did not inform the meeting of his personal interest in the matter and in doing so, failed to deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.
- i. Councillor Campbell's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because as a Local Supplier Level 1, he was eligible to benefit from the local advantage and thus had an advantage over Local Suppliers Level 2 and over non-local suppliers under the Procurement Policy.

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<p>Reasons:</p>	<ol style="list-style-type: none"> 1. Councillor Campbell was alleged, on two instances, to have failed to deal with conflicts of interest in a real and accountable way. These conflicts arose from Council meetings which considered changes to the Council's Procurement Policies, where the Respondent held an interest in a supplying company which could have benefited from those changes. 2. The Respondent admitted that he had a personal interest in the company but denied that this constituted a conflict of interest and denied that this was misconduct. 3. When considering the public interest, the Tribunal found that the public interest in all contexts will reside in the transparent, honest, accountable, and defensible actions of elected members of local government. This is apparent in the purpose of the Act which ensures that the Act provides for "<i>a system of local government in Queensland that is accountable, effective, efficient and sustainable</i>". It is also apparent from the local government principles and the obligations imposed on Councillors and the Mayor. 4. The Respondent also held a greater interest than the other members of the local government area, as his supplying company could have tendered for work for Council under the new policies and received the benefit. This was despite the Respondent's "<i>personal policy</i>" of deciding not to tender during his time as an elected official. 5. The Respondent was an office holder in the supplying company (as a partner), and an office holder in Council (as a Councillor). It should be considered inevitable that, in matters touching on the company's business operations (including tendering for Council) that the Respondent's interest as a partner might conflict with the public interest (which should be his interest as a Councillor). 6. A reasonably informed lay observer would conclude that the Respondent <u>might</u> not bring an uncoloured mind to the assessment of the Procurement Policy. Even if he honestly believed – and the Tribunal has no reason to doubt this honesty – that the conflict did not exist, the observer would conclude that it might influence the Respondent's decision making. 7. The Respondent did not declare any conflict of interest. The Tribunal considered a previous decision where it said: <p style="margin-left: 40px;"><i>But if there is a doubt as to whether he could be perceived to have a personal interest, it would certainly be in the best interests of the Councillor (and transparency of decision-making) to err on the side of</i></p>
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	<p><i>caution and inform Council members at all meetings, so that the decision can be made by the other Councillors.</i></p> <p>8. As the Tribunal has been at pains to reiterate, a breach of trust does not necessarily arise in how a Councillor chooses to exercise their vote in a particular way, but the fact that they participate at all without disclosing the presence of a conflict of interest.</p> <p>9. By failing to disclose his conflict of interest (which would have allowed the other Councillors present to assist in determining how to manage that interest) the Respondent breached the trust reposed in him.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	30 October 2023
Order/s and/or recommendations:	The Tribunal orders, in respect of Allegations 1 and 2, that the Councillor must (within 90 days of the Councillor’s receipt of this decision and reasons) attend training or counselling, at the Councillor’s expense, to address the councillor’s conduct, in accordance with section 150AR(1)(b)(iii) of the Act.
Reasons:	<p>1. Disciplinary orders are protective, not punitive. They are designed to protect the system of local government, and that of the office of Councillor, such that both institutions maintain high standards of conduct and which, in turn, ensures public confidence in the system of local government.</p> <p>2. However, the conduct is also quite aged: nearly five years had elapsed by the time the Applicant commenced these proceedings, and nearly seven by the time this Tribunal has heard them. The Respondent has had adequate time to reflect on his conduct and admitted (or did not challenge) the fact that he held a personal interest. He labored under the mistaken, but honestly and genuinely held, belief that he was permitted to behave in the manner he did. The failure to disclose was not motivated by malice or impropriety, and therefore sits at the lower end of the spectrum.</p> <p>3. To that end, the Respondent’s submissions that a finding of misconduct “would achieve the appropriate protective purpose of the disciplinary proceedings” to be persuasive. The Tribunal is not convinced that another public declaration of misconduct would serve the objectives of the Act or the protection of the office of local government and Councillors.</p>

	<p>4. But the law – and the challenges facing Councillors in exercising their decision-making functions – has changed, even since 2021. The Tribunal considers that the Respondent should receive further training at his expense to ensure that he may continue to discharge his obligations viz conflicts of interest. Having completed that training, the Tribunal may be adequately satisfied that further failures to disclose conflicts of interest by the Respondent could warrant a harsher penalty in the future.</p>
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